

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYMENT RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

THIS DOCUMENT RELATES TO
The Consolidated Securities Class Action

Master File No. 09 MDL 2058 (PKC)
ECF CASE

**DECLARATION OF
SAMSON A. ENZER**

VOLUME I

Samson A. Enzer declares:

1. I am associated with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for defendants Bank of America Corporation and Banc of America Securities LLC (together, "BofA"). I submit this declaration in support of the accompanying Memorandum of Law in Opposition to Plaintiffs' Motion for Partial Summary Judgment.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the deposition of Gregory M. Curl in *People of the State of New York v. Bank of America Corp.*, Index No. 450115/2010 (N.Y. Sup. Ct.), dated May 3, 2012, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-CL 00846656 through BAC-ML-CL 00846901.

3. Attached hereto as Exhibit 2 is a true and correct copy of a presentation, "Creating the Premier Financial Services Company in the World," dated September 15, 2008, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-SEC-LIT 00177201 through BAC-SEC-LIT 00177218.

4. Attached hereto as Exhibit 3 is a true and correct copy of a press release, “Bank of America Buys Merrill Lynch Creating Unique Financial Services Firm,” dated September 15, 2008, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 10069116 through BAC-ML-NYAG 10069120.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the deposition of Gregory M. Curl in the above-referenced action, dated January 22, 2012.

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the April 9, 2012 expert report of Dr. Anil Shivdasani in the above-referenced action.

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the DEFM14A, Definitive Joint Proxy Statement related to the merger between Bank of America Corporation and Merrill Lynch & Co., Inc., dated October 31, 2008.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the Consolidated Second Amended Class Action Complaint in the above-referenced action, filed October 22, 2010.

9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the deposition of Joe L. Price in the above-referenced action, dated April 5-6, 2012.

10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the deposition of Kenneth D. Lewis in the above-referenced action, dated March 27, 2012.

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the deposition of Charles Gifford in the above-referenced action, dated December 8, 2011.

12. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the transcript of Bank of America’s September 15, 2008 investor call, as produced by defendants

in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 00309887 through BAC-ML-NYAG 00309899.

13. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from the deposition of Gregory M. Curl in *People of the State of New York v. Bank of America Corp.*, Index No. 450115/2010 (N.Y. Sup. Ct.), dated April 10, 2009, as produced by defendants in the above-referenced action and bearing Bates numbers BAC/ML-NYAG 0003548 through BAC/ML-NYAG 0003778.

14. Attached hereto as Exhibit 13 is a true and correct copy of a presentation, dated September 14, 2008, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 60019647 through BAC-ML-NYAG 60019658.

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the deposition of David M. Belk in the above-referenced action, dated January 27, 2012.

16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the deposition of Kenneth D. Lewis in *In re Bank of America Corp. Stockholder Deriv. Litig.*, C.A. No. 4307-CS (Del. Ch.), dated March 6, 2012, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-CL 00730871 through BAC-ML-CL 00731003.

17. Attached hereto as Exhibit 16 is a true and correct copy of a declaration of Randall Beaver in the above-referenced action, dated June 29, 2012.

18. Attached hereto as Exhibit 17 is a true and correct copy of an email from Jane Smith, dated December 2, 2008, as produced by defendants in the above-referenced action and bearing Bates number BAC-ML-NYAG 00813730.

19. Attached hereto as Exhibit 18 is a true and correct copy of an excerpt from the 2008 Bank of America Corporation Annual Report (Form 10-K), dated February 27, 2009.

20. Attached hereto as Exhibit 19 is a true and correct copy of excerpts from the minutes of the December 9, 2008 meeting of Bank of America's board of directors, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 00003831 through BAC-ML-NYAG 00003872.

21. Attached hereto as Exhibit 20 is a true and correct copy of excerpts from a December 5, 2008 email and accompanying presentation from Steve Brown, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 70312456 through BAC-ML-NYAG 70312518.

22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from the deposition of Thomas J. May in the above-referenced matter, dated December 21, 2011.

23. Attached hereto as Exhibit 22 is a true and correct copy of email correspondence dated March 19, 2012 between counsel for BofA and counsel for plaintiffs in the above-referenced action.

24. Attached hereto as Exhibit 23 is a true and correct copy of excerpts from the Merrill Lynch & Co., Inc. Quarterly Report (Form 10-Q), filed November 5, 2008.

25. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from a presentation, dated September 14, 2008, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 70288212 through BAC-ML-NYAG 70288223.

26. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from the transcript of Merrill Lynch & Co., Inc.'s Q3 '08 earnings conference call, dated October 16,

2008, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 00724955 through BAC-ML-NYAG 00724965.

27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from the deposition of John A. Thain in the above-referenced action, dated March 22, 2012.

28. Attached hereto as Exhibit 27 is a true and correct copy of excerpts from the Merrill Lynch & Co., Inc. 2008 Annual Report (Form 10-K), filed February 24, 2009.

29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts from the deposition of Eric Heaton in the above-referenced action, dated April 9, 2012.

30. Attached hereto as Exhibit 29 is a true and correct copy of a November 26, 2008 email from Brian Moynihan to Jeff Brown, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 70144492 through BAC-ML-NYAG 70144493.

31. Attached hereto as Exhibit 30 is a true and correct copy of excerpts from Joe Price's script for the December 9, 2008 meeting of Bank of America's board of directors, as produced by defendants in the above-referenced action and bearing Bates numbers BAC-ML-NYAG 70303320 through BAC-ML-NYAG 70303462.

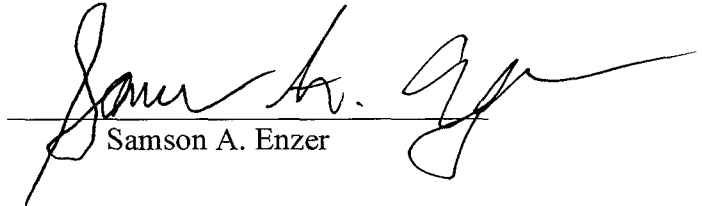
32. I have listened to an audio recording of the special Bank of America shareholder meeting on December 5, 2008 to vote on, among other things, a proposal to issue additional Bank of America shares to effectuate the Bank's merger with Merrill Lynch. I understand that in plaintiffs' motion for partial summary judgment in this action, plaintiffs have challenged a statement that Bank of America CEO Kenneth D. Lewis made at that December 5 meeting. Based on my review of the audio recording, I have confirmed that the challenged

statement begins approximately 30 minutes into the meeting, and that the results from the shareholder vote were announced approximately 45 minutes after the challenged statement.

33. In paragraph 104 of plaintiffs' Rule 56.1 Statement in support of their motion, plaintiffs cite a deck of slides from Bank of America CFO Joe Price's December 9, 2008 presentation to the Bank's board of directors. On February 4, 2010, Bank of America produced to plaintiffs that deck of slides, bearing Bates numbers BAC-502-WLRK 00000972 through BAC-502-WLRK 00000992, including a slide (at BAC-502-WLRK00000982) containing certain accretion and dilution projections referenced by plaintiffs.

34. In accordance with 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
June 29, 2012



Samson A. Enzer